REMARKS/ARGUMENTS

Claims 1-17 and 19-52 were pending at the time of the mailing of the outstanding Office Action. Claims 1-6, 8, 14-17, 21-34, 41, 51, and 52 are under consideration and claims 7, 9-13, 19, 20, 35-40 and 42-50 are withdrawn from consideration. By this response, claim 1 is amended. No new claims have been added and no claims have been cancelled.

In the Office Action of 3 August 2005, the Examiner rejected claims 1, 2, 5, 6, 25 and 30 under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over US Pat. No. 5,556,414 to Turi (hereinafter "Turi"). The Examiner rejected claims 4, 8, 22, 23, 27, 29, 32, 34, and 41 under 35 U.S.C. § 103(a) as being unpatentable over Turi. Claims 3, 21, 24, 26, 28, 31, and 33 were rejected under 35 U.S.C. § 103(a) as obvious over Turi in view of US Pat. Pub. No. 2003/0208279 to Atala (hereinafter "Atala"). Claims 14-17 and 51-52 were rejected under 35 U.S.C. § 103(a) as unpatentable over Turi in view of US. Pat. No. 5,680,873 to Berg (hereinafter "Berg"). The Examiner also required cancellation of non-elected claims 7, 9-13, 19, 20, 35-40 and 42-50 or other appropriate action.

The Examiner maintains that Turi discloses a stent for a vessel comprising a tubular body for expansion from a first condition to a second condition, the stent being configured such that a first part of a stent is disposed inwardly relative to a second part of the stent and wherein in the second condition, at least a portion of the first part changes its position relative to the second part such that the at least portion of the first part is not disposed inwardly relative to the second part of the stent wherein the tubular body includes at least a first wall portion comprising human or animal tissue of adequate elasticity. In support of this contention, the Examiner indicates that a portion of loop 64 that is between adjacent loops 62 in overlap region 70, as shown in Figs 4 and 5 of Turi, satisfies the limitation that a first part (loop 64) of a stent be disposed inwardly relative to a second part (loops 62) of the stent. The Examiner further indicates that in the second condition, at least a part of loop 64 is no longer between loops 62. The Examiner maintains that a portion that "is between i.e., longitudinally overlaps" a second portion

can be classified as being disposed inwardly relative to the second portion. However, such an interpretation is clearly contradicted by the ordinary meaning of the word "inwardly." The definition of the word "inward" is "**1:** situated on the inside : INNER **2:** of or relating to the mind or spirit (~ peace) **3:** marked by close acquitance : FAMILIAR **4:** directed toward the interior." (Webster's Ninth New Collegiate Dictionary, 1994, Merriam-Webster Inc., Springfield MA.) Similarly, "inwardly" is defined as, "**1:** in the innermost being : MENTALLY, SPIRITUALLY **2 a :** beneath the surface ; INTERNALLY (bled ~) **b :** to oneself : PRIVATELY (cursed ~)." (*Id.*) Clearly, a structure at the surface of a stent that "longitudinally overlaps" a second structure on the surface of the stent cannot be considered to be "beneath the surface" of the stent.

The Examiner's new basis for rejection of these claims as anticipated by or obvious in view of Turi is also contradicted his previous bases for these same rejections. For example, in the Office Action of 13 December 2004, the Examiner considered structure 26 of Turi to be disposed inwardly relative to a second part (22) of the stent. This interpretation was reiterated in the Office Action of 30 March 2005. This interpretation was further discussed and reiterated in the interview of 2 May 2005. It is only in the most recent Office Action, dated 3 August 2005, that the Examiner has provided this entirely new interpretation of the limitations of the claims. Because this rationale for rejection could have easily been presented in one of several earlier Office Action, the Applicants maintain that the Examiner has introduced a new ground of rejection that was not necessitated by the previous amendment of the claims or by newly submitted information contained in an Information Disclosure Statement and that therefore, the finality of the current rejection is improper under MPEP § 706.07(a). The Applicants request that the Examiner reconsider and withdraw the finality of the current rejection as premature, and enter the amendment to claim 1 offered herein.

Notwithstanding the statements above regarding the Examiner's new rationale for rejection of claim 1 as anticipated by or obvious in view of Turi, in the interest of economy of prosecution of this application, the Applicants have amended claim 1 to further distinguish the present invention from Turi. Claim 1 now recites that a first part of the stent is disposed *radially* inwardly relative to a second part of the stent in the first condition and that in the second condition, at least a portion of the first part changes its

position relative to the second part such that the at least portion of the first part is not disposed *radially* inwardly relative to the second part of the stent. Support for this amendment may be found in Figs. 1, 2, 4a and 4b and paragraphs 0059 and 0067-0071. Even in the event that the finality of the current rejection is maintained, the present amendment will not require an additional search, because the Examiner previously interpreted and acted upon the claims in a manner consistent with amended claim 1, as discussed above. Additionally, the Applicants maintain that the amendment places the application in condition for allowance and therefore, the amendment may be entered after final rejection. In the alternative, even if the Examiner disagrees with the Applicants' contention regarding the allowability of the claims as amended, the amendment will place the claims in better form for appeal and therefore should be entered.

Claim 1, as amended, patentably distinguishes over Turi because Turi does not teach or suggest a stent configured such that a first part of the stent is disposed radially inwardly relative to a second part of the stent, wherein in the second condition, at least a portion of the first part of the stent changes its position relative to the second part of the stent from its position in the first condition such that the at least portion of the first part is not disposed radially inwardly relative to the second part of the stent. Likewise, Atala and Berg do not teach or suggest this feature of claim 1. In Atala, the stent is merely expanded from a first condition to a second condition with no change in the relative position of the first and second parts of the stent. This element is also neither taught nor suggested by Berg, which provides a guide catheter.

As stated in previous responses to Office Actions, claims 2-6, 8, 14-17, 21-34, 41, 51, and 52 provide additional distinctions not taught or suggested in the prior art. For example, claims 6 and 30 recite the additional presence of a hardening agent. The Applicants continue to traverse the Examiner's assertion that the use of a hardening agent is anticipated by the adhesive of Turi. While an adhesive can harden as it cures or dries, such a composition would be more properly characterized as a *hardenable* agent (i.e., the agent itself becomes hard) than as a *hardening* agent (i.e., an agent that acts to cause or influence another component to harden). This distinction is clearly described in the specification, where the use of a hardening agent is described in paragraphs 0021–0026, while the use of an adhesive is described in paragraphs 0027-0033.

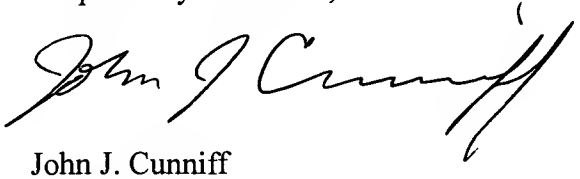
Because the cited prior art does not teach or suggest all of the limitations of claims 1-6, 8, 14-17, 21-34, 41, 51, and 52, withdrawal of the rejections of these claims under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) is respectfully requested.

Because the Applicants maintain that generic claims 1-6, 8, 14-17, 21-34, 41, 51, and 52 patentably distinguish over the cited prior art, rejoinder of the non-elected claims of group I, claims 7, 9-13, 19, 20, 35-40 and 42-50, is also requested. The issuance of a Notice of Allowance is respectfully solicited.

The outstanding Office action was mailed on 3 August 2005. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, a response is timely filed on or before 3 November 2005.

No fees are believed to be due with this response. However, in the event that a fee for the filing of his response is insufficient, the Commissioner is authorized to charge any fee deficiency or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,



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